

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and	)	WC Docket No. 11-42
Modernization	)	

To: Chief, Wireline Competition Bureau

**REQUEST FOR TEMPORARY WAIVER OF  
LIFELINE MINIMUM SERVICE STANDARD**

Broadband VI, LLC (“Broadband VI”), by counsel and pursuant to Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, respectfully requests temporary waiver of the minimum standard for speed for Lifeline-supported services adopted in the above-referenced proceeding.<sup>1</sup> As explained below, the special circumstances affecting fixed broadband service delivery in the U.S. Virgin Islands (“USVI”) – a territory still recovering from the devastation caused by major Hurricanes Irma and Maria in 2017 – warrant relief from the required minimum service speed standard for a limited period of time through December 1, 2019.

**I. INTRODUCTION AND BACKGROUND**

Broadband VI, a U.S. Virgin Islands limited liability company, is owned and operated by USVI residents. Founded in October 2002, Broadband VI today is one of the largest providers of fixed broadband services in the USVI, with more than 9,300 subscribers and coverage to more

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<sup>1</sup> See *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (“*Lifeline Modernization Order*”). See also *Public Notice*, “Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount,” WC Docket No. 11-42, DA 17-619 (rel. June 26, 2017) (announcing updated minimum service standard speed of 15 Mbps downstream and 2 Mbps upstream, effective December 1, 2017); *Public Notice*, “Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount,” WC Docket No. 11-42, DA 18-739 (rel. July 18, 2018) (announcing updated minimum service standard speed of 18 Mbps downstream and 2 Mbps

than 95 percent of the territory's homes and businesses. Broadband VI relies primarily on unlicensed spectrum, which enables it to deploy quickly in a cost-effective manner to deliver affordable fixed broadband service to the public.

In 2017 major Hurricanes Irma and Maria delivered a devastating one-two punch that crippled the communications networks serving the residents of the USVI. The damage caused by the two hurricanes was wide-ranging and complete. In the words of the Commission, “[t]he 2017 hurricane season caused widespread devastation to . . . the U.S. Virgin Islands, destroying thousands of homes and causing near total destruction of critical infrastructure.”<sup>2</sup> Recovery efforts hampered by circumstances unique to the Virgin Islands compounded the misery. As the Commission observed, “[r]ecovery of the communications networks . . . in the U.S. Virgin Islands has proven especially challenging, particularly compared to other locations in the United States impacted by this season’s hurricanes due to their isolation from the mainland, which has caused logistical difficulties and contributed to ongoing electrical outages.”<sup>3</sup>

Recognizing the need to support the efforts to restore service on the hard-hit U.S. Virgin Islands, the Commission established the Connect USVI Fund, with Stage 1 of that fund intended to provide an immediate infusion of \$13 million for restoration efforts in 2018.<sup>4</sup> The Commission authorized Broadband VI to receive \$931,211.69 in Stage 1 funding, conditioned on the requirement that Broadband VI be designated an eligible telecommunications carrier (“ETC”) by the Virgin Islands Public Services Commission.<sup>5</sup> Broadband VI received its

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upstream, effective December 1, 2018). The facts stated herein are confirmed by the Declaration of Mike Meluskey that is attached hereto.

<sup>2</sup> See *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Order and Notice of Proposed Rulemaking, FCC 18-57 at ¶ 1 (rel. May 29, 2018) (“*Connect USVI Fund Order*”).

<sup>3</sup> *Id.*

<sup>4</sup> See *Connect USVI Fund Order* at ¶ 4.

<sup>5</sup> See *Public Notice*, “Wireline Competition Bureau Announces Stage 1 Restoration Funding for the Uniendo a Puerto Rico and the Connect USVI Fund,” WC Docket Nos. 18-143 and 10-90, DA 18-825 (rel. Aug. 7, 2018).

required ETC designation on September 5, 2018 and has submitted the necessary documentation to USAC so that Stage 1 funds can be disbursed forthwith.<sup>6</sup>

Following the hurricanes (but long before it received its Stage 1 authorization), Broadband VI began an aggressive campaign to restore service as soon as it could, including rebuilding towers, replacing equipment at each of its tower sites, and rebuilding and re-aligning dishes. The results of this recovery effort, which has cost Broadband VI more than \$2 million of its own money, have been remarkable.<sup>7</sup> Today, Broadband VI serves nearly 2,000 more subscribers than it did prior to the hurricanes.

Unfortunately, prioritizing the restoration of customer services has unavoidably meant a slower recovery timetable for other infrastructure components comprising Broadband VI's network. In other words, Broadband VI prioritized providing some broadband services to as many consumers and businesses as possible over rebuilding robust networks that could meet the Commission's Lifeline speed minimums. This decision was a function of both the greater public good and the lack of infrastructure that would enable Broadband VI to meet the Lifeline speed benchmarks. Most critically, restoring the backhaul and access points has lagged behind due to the initial focus on repairing downed towers and misaligned dish antennas. To be sure, Broadband VI is rebuilding and upgrading the backhaul and access point capabilities as quickly as events will allow, but these components still suffer, and will continue to suffer in the near term, from capacity constraints due to a combination of lingering hurricane damage and the growth of Broadband VI's subscriber base. These constraints adversely affect the ability of Broadband VI to offer its services, in particular its faster, more data-intensive services.

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<sup>6</sup> See *In re: Broadband VI, LLC Petition for Eligible Telecommunications Carrier Designation in the U.S. Virgin Islands*, Order, Docket No. 669, Order No. 49/2018 (rel. Sept. 5, 2018).

<sup>7</sup> Broadband VI estimates that its Stage 1 funding will cover less than 25 percent of the costs incurred in restoring its hurricane-damaged network.

Broadband VI currently offers two levels of residential broadband service: a lower tier featuring 10 Mbps download and 1 Mbps upload speeds at \$49.95 per month and, where infrastructure can support higher speeds, a higher tier featuring 25 Mbps download and 5 Mbps upload speeds at \$99.95 per month. Broadband VI plans to roll out a middle tier of service to meet the Lifeline minimum service speed of 15 Mbps upload and 2 Mbps download at \$69.95 per month. The timing of the roll-out is dependent on the Commission's action on the instant waiver request. Each of Broadband VI's tiers will be discounted \$10.00 per month for Lifeline-eligible subscribers.

## **II. REQUEST FOR TEMPORARY WAIVER**

Broadband VI requests waiver of Section 54.408 of the Commission's rules, 47 C.F.R. § 54.408, to allow it to offer Lifeline-supported fixed broadband service with a minimum service standard of speed of 10 Mbps download and 1 Mbps upload until December 1, 2019. Upon expiration of the waiver, Broadband VI will then offer a Lifeline-supported broadband service that satisfies any future minimum service standard speed the Commission may establish.

The Commission may waive any of its rules if there is "good cause" to do so.<sup>8</sup> In general, waiver is appropriate if: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation would better serve the public interest than would strict adherence to the general rule.<sup>9</sup> Circumstances that justify a waiver include "consideration of hardship, equity, or more effective implementation of overall policy."<sup>10</sup> Generally, the Commission will grant a waiver of its rules in a particular case if the relief requested would not undermine the policy

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<sup>8</sup> See 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>9</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>10</sup> *WAIT Radio*, 418 F.2d at 1159.

objective of the rule in question, and would otherwise serve the public interest.<sup>11</sup> As explained below, there is ample “good cause” to grant the waiver requested herein.

**A. The Effects Of The 2017 Hurricanes Provide The Special Circumstances That Justify Grant Of Broadband VI’s Waiver Request.**

The Commission adopted Lifeline minimum service standards in order for Lifeline customers “to obtain the type of robust service which is essential to participate in today’s society.”<sup>12</sup> The standard for fixed broadband speed is based on the minimum service to which the “substantial majority” of the nation’s consumers subscribe.<sup>13</sup> Broadband VI wholly supports this policy and agrees that no low-income citizen of the United States should be without access to essential broadband service.

However, when announcing the minimum service speeds of 15/2 Mbps and 18/2 Mbps (to take effect December 1, 2018), the Commission either could not or did not take into account the unprecedented impact of Hurricanes Irma and Maria on the USVI and the corresponding ability and priorities of broadband providers like Broadband VI. The two hurricanes unleashed their destructive power within days of each other and caused such wide-spread and total devastation that the Commission felt compelled to establish the dedicated Connect USVI Fund to support recovery of the territory’s broadband networks. In the wake of these natural disasters, the general rule of a broadband minimum speed based on what the “substantial majority” of

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<sup>11</sup> *Id.* at 1157.

<sup>12</sup> *Lifeline Modernization Order*, 31 FCC Rcd at 3988.

<sup>13</sup> *See id.* at 3992 (citing 47 U.S.C. 254(c)(1)(B).) The standard is set at the 30<sup>th</sup> percentile, rounded up to the nearest Mbps integer, of subscribed fixed broadband downstream and upstream speeds, as determined by an analysis of FCC Form 477 data.

subscribers represents an impractical, if not unreachable, standard for service providers in the USVI.<sup>14</sup>

The enduring impact of the 2017 hurricanes on fixed broadband delivery provides the “special circumstances” marked by “hardship” that warrants a deviation from the minimum service speed general rule. Broadband VI estimates that by December 1, 2019 it will have repaired and upgraded its backhaul links and access points to a point where it will be better able to meet fixed broadband service demand using faster speeds. Until that time, allowing for the less bandwidth-intensive 10/1 Mbps speed will permit Broadband VI to serve more of its customers more reliably. Put another way, by temporarily foregoing a measure of speed, Broadband VI will be better equipped to support the basic broadband needs of a greater number of low-income subscribers until its network infrastructure is fully repaired. This tradeoff will best promote the Lifeline policy objective of providing a level of broadband service essential to daily life.

Broadband VI’s waiver request is uniquely a product of the hurricanes that struck the USVI, and thus stands apart from other efforts pending before the Commission to relax the Lifeline minimum service standard speeds. NTCA – The Rural Broadband Association (“NTCA”), for example, is seeking a temporary waiver of the minimum speed standards for “its members and other similarly situated operators.”<sup>15</sup> Broadband VI notes (without addressing the merits of the request) that NTCA’s waiver request is inclusive in nature and seeks blanket relief regardless of special conditions, service provider, or customer condition. By contrast,

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<sup>14</sup> As previously noted, the Commission recognizes that recovery efforts in the Virgin Islands present greater challenges than elsewhere in the United States. *See* footnote 3, *supra*.

<sup>15</sup> *See* Petition for Temporary Waiver of NTCA – The Rural Broadband Association, WC Docket No. 11-42 et al., at 1 (filed July 23, 2018).

Broadband VI's request is a narrowly tailored response to the special circumstances that have befallen the hurricane-ravaged USVI.

**B. Granting Broadband VI's Waiver Request Will Better Serve The Public Interest By Allowing For Temporary Relief From Higher Cost Broadband Service.**

Waiver of the Commission's rules is warranted when the public interest is better served than by strict adherence to the general rule. This standard provides another basis for granting the instant waiver request because temporarily lifting the mandated 15/2 and 18/2 Mbps speed standards will provide the residents of the USVI with a low-cost broadband option at the time when it is needed most.

Affordable broadband service has never been more important to Virgin Islanders than now. Prior to the 2017 hurricanes, the average wealth of citizens of the USVI already trailed that of other U.S. citizens. The median household income of the USVI was \$37,254 compared to an average of \$57,617 for the fifty states and the District of Columbia.<sup>16</sup> In addition, the percentage of citizens below the poverty rate for the USVI (22 percent) was more than 50 percent higher than that of the rest of the United States (14 percent).<sup>17</sup> The 2017 hurricanes only exacerbated this disparity in wealth, with the lowest income Virgin Islanders being the hardest hit.

According to *The Washington Post*, Hurricanes Irma and Maria may have "blown a generation of Virgin Islanders out of the middle class," resulting in "disparities between rich and poor that have persisted for generations . . . [becoming] even more glaring."<sup>18</sup> Given these economic

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<sup>16</sup> See *U.S. Virgin Islands: Fast Facts*, Henry J. Kaiser Family Foundation (Dec. 13, 2017) available at [www.kff.org/disparities-policy/fact-sheet/u-s-virgin-islands-fast-facts/#footnote-246084-6](http://www.kff.org/disparities-policy/fact-sheet/u-s-virgin-islands-fast-facts/#footnote-246084-6) (last visited Oct. 18, 2018).

<sup>17</sup> *Id.*

<sup>18</sup> Tim Craig, "Shredded Roofs, Shattered Lives," *The Washington Post*, Feb. 6, 2018, available at [www.washingtonpost.com/news/national/wp/2018/02/06/feature/as-tourism-returns-hurricane-recovery-in-the-virgin-islands-is-leaving-some-residents-behind/?utm\\_term=.467f384f1e0a](http://www.washingtonpost.com/news/national/wp/2018/02/06/feature/as-tourism-returns-hurricane-recovery-in-the-virgin-islands-is-leaving-some-residents-behind/?utm_term=.467f384f1e0a) (last visited Oct. 18, 2018).

circumstances, offering broadband services at the lowest possible price becomes a critical consideration where the most economically challenged Virgin Islanders are concerned.

Unfortunately and unavoidably, as broadband service speed increases, so too does the cost of that service. Broadband VI will be able to offer its 15/2 Mbps service at a Lifeline-discounted price of \$59.95. The cost of its discounted 18/2 Mbps service has not yet been established but will likely be higher. While these services will be fairly and competitively priced, the cost will still be too high for some lower-income Virgin Islanders still suffering from the effects of the hurricanes. Currently, 58 percent of Broadband VI customers subscribe to its 10/1 Mbps broadband service at \$49.95 per month. Offering that same service at a Lifeline-subsidized price of \$39.95 per month will provide an incentive for the most economically challenged subscribers to retain the service, and may also convince similarly situated non-subscribers to sign on as well. And when these customers do so, the service they receive will more than meet their basic broadband needs. While it is true that the 10/1 Mbps speed is slower than the current minimum service standard for speed, it remains a viable level of service for the vast majority of broadband uses. Indeed, less than a year ago, 10/1 Mbps *was* the minimum speed standard for Lifeline.

The Commission has historically recognized that victims of natural disasters, especially lower income victims, warrant special treatment. When Hurricane Katrina struck the Gulf Coast of the United States in 2005, the Commission took steps to “ensure that needed telecommunications and information services will continue to be available throughout our nation on an affordable basis despite the impact of this national tragedy.”<sup>19</sup> These steps included providing for temporary support under the federal Lifeline program for eligible

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<sup>19</sup> See *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 16883, 16886 (2005).



telecommunications carriers making available a wireless service consumer offering to victims of Hurricane Katrina.<sup>20</sup> As in the case of Hurricane Katrina’s victims, Virgin Islanders likewise merit some “breathing room” in the form of broadband service at the lowest possible price while the adverse economic effects of the 2017 hurricanes subside. The temporary waiver period requested by Broadband VI provides that “breathing room.” While strict adherence to the minimum service standard would mean faster broadband service, deviating from that standard will better serve the public interest by encouraging more people to subscribe, thereby fostering the Lifeline program’s goal of providing access to affordable broadband to lower-income citizens.

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<sup>20</sup> *See Id.* at 16888 (providing eligible persons a free wireless handset and a package of at least 300 minutes of use, not to exceed \$130 per household, until March 1, 2006).

### III. CONCLUSION

For the foregoing reasons, Broadband VI respectfully requests that the Commission waive the Lifeline minimum service standard for speed to allow it to provide Lifeline-subsidized service at 10/1 Mbps to its USVI customers for a limited period of time through December 1, 2019.

Respectfully submitted,

**BROADBAND VI, LLC**

By: /s/ Stephen E. Coran  
/s/ Philip A. Bonomo  
Stephen E. Coran  
Philip A. Bonomo  
Lerman Senter PLLC  
2001 L Street, NW, Suite 400  
Washington, DC 20036  
(202) 429-8970  
*Its Attorneys*

October 18, 2018

### **Declaration of Mike Meluskey**

My name is Mike Meluskey, and I am the CTO and Founder of Broadband VI, LLC. I am making this Declaration in connection with the Broadband VI's Request for Temporary Waiver of Lifeline Minimum Service Standard ("Waiver Request"), which seeks temporary waiver of the minimum service speed for Lifeline-supported services through December 1, 2019. I hereby declare under penalty of perjury that I have personal knowledge of such facts and that the statements of fact set forth in the Petition are true and accurate to the best of my knowledge.

By:

  
Mike Meluskey

Date

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